(1920) 142 Ark. 557, 219 S. W. 11; *Crane v. School District* (1920) 95Or. 644, 188 Pac. 712. It seems strange, however, that courts have not taken the necessary step further and recognized that the same things which excuse the plaintiff from the performance of *his* duty, should excuse the defendant when he makes it impossible for the plaintiff to perform a condition precedent to the *defendant's* duty. For example, if the influenza epidemic had reached such proportions that the teacher's life would be endangered if he continued to teach, there is little doubt that he would be excused from his promised performance, and that the defendant would be excused from payment, since the latter had not received the expected consideration. *Lakeman v. Pollard* (1857) 43 Me. 463. Thus if the plaintiff's promised performance was the attendance of babies at a baby show, if the prevalence of an epidemic made such attendance dangerous to the lives of the babies, the plaintiff would be excused from performance and the defendant from payment. *Hanford v. Conn. Fair* (1918) 92 Conn. 621, 103 Atl. 838. If the plaintiff has the privilege to refuse performance if his or a third person's life is endangered, and thereby can destroy the *defendant's* rights under the contract as well as his own, there seems to be no reason why the defendant under the same circumstances should not have the privilege to keep the plaintiff from performing the condition precedent to the defendant's duty, and thereby destroy the *plaintiff's* rights under the contract, as well as his own. Tested by this reasoning, even without such statutory sanction as in the principal case, the defendant should be excused. *Sandry v. Brooklyn School District* (1921, N. D.) 182 N. W. 689; 3 Williston, *Contracts* (1920) sec. 1958.

COPYRIGHT—COMMON-LAW COPYRIGHT—PRODUCER'S RIGHTS IN CREATION.—The defendant, composer of the "Wicked Blues," sold all his rights therein to the plaintiff. Subsequently the defendant with others copyrighted the song as the "Crazy Blues" and published it. The plaintiff sought an injunction. *Held,* that the defendant by his sale to the plaintiff parted with his common-law rights in the production and that an injunction should issue. *Kortlander v. Bradford* (1921, Sup. Ct.) 116 Misc. 664, 190 N. Y. Supp. 311.

Until publication a producer has at common law full property rights in his intellectual creations. *Parton v. Prang* (1872, C. C. D. Mass.) 3 Cliff. 537; *Bobbs-Merrill Co. v. Straus* (1906, C. C. A. 2d) 147 Fed. 15; Morgan, *Law of Literature* (1875) 392. What constitutes a publication is often difficult to determine. "A publication consists in such a disclosure, exhibition, or distribution as implies an abandonment of the right of copyright or its dedication to the public. . . . . The nature of the subject-matter . . . . and the nature of the rights secured, are chiefly determinative of the question of publication." *Werckmeister v. American Lithographic Co.* (1904, C. C. A. 2d) 134 Fed. 321, 326. It was originally held that even after publication or dedication to the public the exclusive right to the control of reproduction remained with the producer, his representatives, or assigns. *Millar v. Taylor* (1769, K. B.) 4 Burr. 2303. But it is now everywhere well-settled that a producer's common-law rights in an unpublished work cease upon publication. *Donaldsons v. Beckett* (1774, H. L.) 4 Burr. 2408; *Wheaton v. Peters* (1834, U. S.) 8 Pet. 591. See Drone, *Copyright* (1879) 13. The right to the control of reproduction after publication is now purely statutory. *Caliga v. Inter Ocean Newspaper Co.* (1909) 215 U. S. 182, 30 Sup. Ct. 38. Having full property rights prior to publication, an author can deal with his production as with any other personalty. *Maurel v. Smith* (1921, C. C. A. 2d) 271 Fed. 211. He may dispose of the physical object solely and retain the right to make copies or to obtain a copyright. *Parton v. Prang, supra; Stephens v. Cady* (1852, U. S.) 14 How. 528. He may otherwise make a restricted disposal of it as by selling the right to reproduce in certain countries only. *Daly v. Walrath*

(1899) 40 App. Div. 220, 57 N. Y. Supp. 1125. In the present case, the producer before publication, by an unrestricted disposal, chose to divest himself of all rights in his production. Consequently a subsequent assignee, whether taking with or without notice, could not interfere with the first assignee's right to the exclusive use of the property. See *Harms v. Stern* (1915, C. C. A. 2d) 229 Fed. 42.

DAMAGES—BREACH OF CONTRACT—REMOTENESS OF LOSS.—The defendant's agent, upon receipt of $502.44 from the plaintiff's agent, promised to telegraph the sum of $500 to Baltimore and there pay that amount to such person as the defendant believed to be the plaintiff without requiring positive evidence of identity, the plaintiff's agent at the time of sending the message signing a waiver of identification. The defendant refused to deliver to the plaintiff at Baltimore without positive identification, whereby the plaintiff, because unable to deposit promptly $500 for certain horses which he had purchased and resold, lost $7,500. *Held,* that the plaintiff could recover only nominal damages. *Taggart v. W. U. Tel. Co.* (1921) 198 App. Div. 366, 190 N. Y. Supp. 450.

If loss of profits resulting from a breach of contract can be measured with reasonable certainty, and if such loss results not too remotely from the breach, damages therefor may be recovered. *Nelson v. Davenport* (1919) 108 Wash. 259, 183 Pac. 132; *Tompkins v. Bridgeport* (1920) 94 Conn. 659, 110 Atl. 183. If a promisor actually knows the kind of benefits his promisee reasonably expects from performance of the contract, and if the benefits anticipated are not inherently speculative, then the loss of those benefits as a result of the promisor's breach is usually held not remote. *Czizek v. W. U. Tel. Co.* (1921, C. C. A. 9th) 272 Fed. 223; *Miles v. Am. Ry. Exp. Co.* (1921, Ark.) 233 S. W. 930; *W. U. Tel. Co. v. Johnson* (1921, Tex.) 226 S. W. 671; *Shurtleff v. Occidental Bldg. & Loan Assoc.* (1921, Neb.) 181 N. W. 374. Conversely, if the benefits are not within the reasonable contemplation of the promisor, the promisee upon breach cannot recover damages for their loss. *Hadley v. Baxendale* (1854) 9 Exch. 341; *Hines v. Denny* (1921) 190 Ky. 416, 227 S. W. 567. And, as the instant case holds, this is true even though the amount of the loss can be measured with certainty. A statement in the body of a telegram, if reasonably clear to the telegraph company, may put the company upon such notice of the kind of benefits expected by the sender, as to justify his recovery of damages arising from their loss in case of failure to transmit and deliver the message properly. *Dettis v. W. U. Tel. Co.* (1919) 141 Minn. 361, 170 N. W. 334. But here, too, if the anticipated benefits are not measurable with reasonable certainty there can be no recovery for their loss. *Harris v. W. U. Tel. Co.* (1918) 136 Ark. 63, 206 S. W. 52. The instant case seems in accord with the best authority.

FORCE MAJEURE—IMPOSSIBILITY OF PERFORMANCE AS A DEFENCE.—A statute imposed a duty on the appellants to pay a penalty for failing to supply electricity to applicants. In a suit by the respondent for the penalty, the appellants set up the defence of *force majeure* which the statute allowed. They proved that performance was prevented by the refusal of their union employees to connect their main with respondent's wiring, which had been installed by a non-union contractor. The trial court found a "grave probability" of a strike which would plunge the whole community into darkness, if the recalcitrant employees were dismissed. *Held,* that this apprehension of danger was not *force majeure. Hackney Borough Council v. Dore* (1921, K. B.) 38 T. L. R. 93.

Recent English cases reveal a tendency of attorneys in drafting contracts to secure elasticity in the clause excusing non-performance by employing the term *"force majeure."* It is admirable for their purpose for as yet the courts are reluctant to give it a definition. Although the term *"force majeure"* is of French